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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1993

Addendum

AZERBAIJAN

[25 January 1994]

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INFORMATION ON INDIVIDUAL ARTICLES OF THE COVENANT

Article 1

1. The Azerbaijani Republic confirms its unswerving commitment to the self-determination of peoples and to their right freely to determine their political status and freely to pursue their economic, social and cultural development. It supports the provision of article 47 of the Covenant that "Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

2. Article 16 of the Constitutional Act concerning the State independence of the Azerbaijani Republic reads as follows: "The Azerbaijani Republic, in accordance with the generally recognized rules of international law, builds its relations with other States on the basis of the principles of the sovereign equality of States, the non-use of force or of the threat of force, the inviolability of State frontiers, the settlement of disputes by peaceful means, non-intervention in the domestic affairs of other States, respect for human rights and fundamental freedoms, the equality of peoples and their right of self-determination, cooperation between States and the fulfilment in good faith of international legal obligations".

3. The Azerbaijani Republic is firmly convinced of the need to extend all-round support to peoples fighting for their liberation and the restoration of their fundamental rights, among which the most important is the right of self-determination.

4. At the same time the Azerbaijani Republic, foreseeing a danger of micronationalism when many small groupings want to set up independent States, and of ultranationalism when a number of States do not accept the applicable principles of operation of the United Nations or interpret them in their own interests chiefly in pursuance of their own policy, maintains that self-determination should be applied exclusively to former colonies. This principle cannot be used for regional groupings within a State. Otherwise, other basic principles - sovereignty and the inviolability of frontiers - are violated.

An example of the pernicious consequences attendant upon violation of these principles is the aggression which has been continuing for more than five years against the Azerbaijani Republic and the occupation of its territory by the neighbouring Republic of Armenia, which is using the right of self-determination of peoples, in particular that of the Armenian minority in the Nagorny Karabakh region of the Azerbaijani Republic, as a factor in concealing its far-reaching plans to seize the territories of others.

5. The Azerbaijani Republic is endeavouring and will continue to make every effort to achieve the elimination of colonialism and its last hotbeds, of all forms of racial discrimination and rapacious exploitation of wealth and resources, the complete abolition of apartheid and the restoration of the inalienable rights of the peoples who have fallen victim to that practice.

Article 2

6. As indicated in the document devoted to the general legal framework, article 19 of the Constitutional Act of the Azerbaijani Republic proclaims that all citizens of the Azerbaijani Republic are equal before the law. The Azerbaijani Republic has acceded to the Universal Declaration of Human Rights, the Final Act of the Helsinki Conference and other generally recognized instruments of international law and ensures the observance and unhindered exercise of all the rights and freedoms enunciated therein, without distinction as to sex, race or nationality, religion, social origin, political convictions or other status.

7. In addition the Republic has passed a series of new laws on a wide range of political, economic, social and cultural matters which fully conform to the fundamental principle of barring discrimination and of respect for human rights.

8. The legislative system of Azerbaijan provides for any alien lawfully present in the national territory to enjoy rights and protection on an equal footing with citizens of the Azerbaijani Republic, with some exceptions which relate to the status of foreign citizens.

9. Most of the rights set forth in the Covenant are embodied in the national legislation and in effect today. International conventions ratified by Azerbaijan take precedence over the law. Every decision by the National Assembly of Azerbaijan concerning accession to a particular international legal instrument gives the competent ministries and departments specific instructions to take steps to bring the relevant laws and normative texts of the Azerbaijani Republic into conformity with that instrument.

10. Under the act of the former USSR concerning the procedure of appeal to the court against the unlawful acts of organs of State administration and officials infringing citizens' rights, dated 2 November 1991, which is in force in the Azerbaijani Republic, citizens have the right to apply to the court for protection of their personal, family, labour, housing and other rights and freedoms.

11. The acts of organs of State administration and officials subject to judicial appeal include collective and individual acts as a result of which:

A citizen is wrongfully deprived of the possibility of exercising, in whole or in part, a right granted to him by statute or other normative text;

An obligation of any kind is wrongfully laid upon a citizen (art. 2).

After an appeal has been made against the acts of an organ of State administration or an official, the appeal shall be handed to the court and referred to the next higher organ or official, who shall be bound to examine it and to inform the citizen of the results of the examination within one month (art. 4).

The appeal shall be examined by the court within 10 days with the participation of the appellant citizen and the director of the organ of State administration or the official whose acts are complained of, or the representative thereof (art. 6).

If, after examining the appeal, the court finds that there has been a breach of the established procedure for the examination of citizens' proposals, statements and appeals, or that procrastination, suppression of criticism, persecution on account of criticism or any other breach of legality has occurred, it shall make a special ruling and transmit it to the higher official or organ. The said official or organ shall be bound to inform the court within one month of the measures taken pursuant to the special ruling.

If, after examining the appeal, the court finds the characteristics of an offence in the acts of an official or another person, it shall either refer the matter to the procurator or institute criminal proceedings (art. 8).

An appeal or protest against the court's decision on the appeal shall lie to a higher court (art. 9).

12. The Criminal Code prescribes liability for the abuse of authority or official powers, i.e. the deliberate performance by an official of acts clearly exceeding the rights and powers vested in that official by law, if this has caused substantial harm to State or public interests or to citizens' rights and interests protected by law, and for the abuse of authority or powers accompanied by violence, use of a weapon or acts which torment or degrade the victim (art. 168).

13. The courts, procurators, investigators and organs of inquiry shall be bound, within the limits of their competence, to prosecute whenever evidence of an offence is found and to take all the steps prescribed by law to establish the facts of the offence and to identify and punish those guilty of committing the offence (art. 3 of the Code of Criminal Procedure).

Prosecution for the offences specified in articles 106 (intentional infliction of slight bodily injury), 108 (1) (battery and torture), 121 (1) and (2) (defamation) and 122 (insult) of the Criminal Code of the Azerbaijani Republic may be instituted only upon a complaint from the victim or his legal representative.

If the victim is helpless, dependent on the accused or unable personally to protect his rights, the procurator shall be bound to prosecute on his own initiative or to intervene in the case. The procurator shall also prosecute or intervene where the resolution of the case is a public matter.

Prosecution for the offence specified in article 109 (1) of the Criminal Code (rape) may be instituted only upon the complaint of the victim, but the proceedings shall not be discontinued in the event of a reconciliation between the victim and the accused (art. 105).

Citizens' statements, communications from public organizations, enterprises, institutions, organizations and officials and communications published in the press may also constitute grounds for prosecution (art. 104).

14. The Code of Civil Procedure defines the right of every interested person to apply to the court for protection of a violated or contested right or of an interest safeguarded by law.

A waiver of the right to apply to the court shall be null and void (art. 3).

Article 3

15. The equal rights of men and women are ensured by affording women equal opportunities with men to receive education and vocational training, in employment, remuneration of work and promotion, and in socio-political and cultural activities; also by special measures regarding the occupational safety and health of women; by creating conditions enabling women to combine work with motherhood; by legal protection and material and moral support for mothers and children, including the grant of paid leave and other advantages to pregnant women and mothers and the gradual reduction of working hours for women who have small children.

16. The national legislation makes no distinction whatsoever between men and women, who are completely equal in rights and obligations.

Azerbaijani women have the right to vote and to be elected on the same terms as men, to participate in the conduct of public affairs, to be members of Parliament, to work in State institutions and to be appointed to high public office. They take an active part in the country's political, economic, social and cultural life.

17. Article 51 of the Constitution contains a provision to the effect that the family is under the protection of the State. Marriage is based on the voluntary consent of the woman and the man; the spouses are fully equal in rights in family matters.

18. Compelling a woman to enter into marriage, or preventing her from entering into marriage of her own free will, combined with the use or threat of violence, is an offence under article 128 of the Criminal Code.

Article 129 of the Criminal Code prescribes the penalty for abducting a woman for the purpose of marriage, and article 130 that for bigamy and polygamy.

Article 4

19. On 4 February 1992 the President of the Azerbaijani Republic signed the State of Emergency Act of the Azerbaijani Republic, which was brought into force by decision of the National Assembly of the Supreme Council of Azerbaijan on 15 February 1992.

20. Under this Act, in accordance with the Constitution of the Azerbaijani Republic and in the interests of protecting the Azerbaijani Republic and the safety of its citizens, a state of emergency may be declared in certain localities: i.e., a special legal regime for the activity of the organs of State authority and administration, public associations of citizens, enterprises, institutions and organizations, allowing restrictions prescribed by this Act on the rights and freedoms of citizens and on the rights of legal persons, and laying additional obligations upon them.

The purpose of declaring a state of emergency is to restore the situation to normal as soon as possible, to restore citizens' rights and freedoms and law and order, and to eliminate the consequences of natural disasters; of ecological and other catastrophes (art. 1); of acts aimed at violating the territorial integrity of the Azerbaijani Republic or changing its constitutional system by force; of mass disorders involving violence, or of inter-ethnic conflicts threatening the lives and safety of citizens or the normal activity of State institutions (art. 2).

A state of emergency shall be declared by decree of the President of the Azerbaijani Republic and immediately submitted for confirmation by the National Assembly (Parliament), which shall take a decision on the matter within 24 hours (art. 4).

A decree declaring a state of emergency which is not confirmed by a decision of the National Assembly of the Azerbaijani Republic shall cease to have effect (art. 7).

The following measures may be instituted during a state of emergency, depending on the specific circumstances:

(1) Special rules for entering and leaving, and also restriction of the freedom of movement within, the territory in which the state of emergency is declared;

(2) Strengthened protection of public order and of installations which perform vital functions for the population and the economy;

(3) Prohibition of assemblies, meetings, street processions and demonstrations, and other mass events;

(4) Prohibition of strikes;

(5) Restriction of traffic and checking of vehicles;

(6) Curfew, i.e. making it unlawful to be in the streets and other public places between specified hours without special passes and identity papers;

(7) Restriction of freedom of the press and other mass media through preliminary censorship; temporary confiscation of sound-amplifying equipment and duplicating machines;

(8) Suspension, after appropriate notice, of the activities of political parties, public organizations and mass movements which seriously obstruct the restoration of the situation to normal;

(9) Checking of papers in places where citizens assemble and in exceptional cases - where there is information that citizens are carrying weapons - body search and inspection of property and vehicles;

(10) Restriction or prohibition of the carriage, acquisition and sale of weapons, poisonous or explosive substances, ammunition and alcoholic beverages; in exceptional cases, temporary confiscation of firearms, cold steel and ammunition, and poisonous and explosive substances from citizens, and of the same items plus military training equipment and radioactive substances from enterprises, institutions and organizations;

(11) Expulsion of non-residents who disturb public order from the territory in which the state of emergency has been declared;

(12) Temporary relocation of citizens away from areas dangerous to live in and provision of fixed or temporary housing for them;

(13) Introduction of special arrangements for the distribution of food and essential commodities;

(14) Imposition of quarantine and other measures of sanitation and epidemic and epizootic control;

(15) Mobilization of the resources of State and other enterprises, institutions and organizations, modification of their regime of work, reorientation of activities towards the production of goods needed in the state of emergency and other changes in productive activity required in order to carry out urgent rescue and repair work;

(16) Removal from office of the directors of State institutions, enterprises and organizations for the duration of the state of emergency in the event of their failure to discharge their duties properly, and appointment of temporary replacements for them;

(17) In exceptional cases in which urgent rescue work is needed, mobilization of able-bodied members of the population and private vehicles to carry out such work, with mandatory provision for the safety of operations;

(18) Introduction of special rules concerning the use of communications.

Measures taken under a state of emergency which involve changes in the statutory powers of the organs of State authority and administration, the rights of public associations and the rights, freedoms and obligations of citizens shall be implemented within limits as required by the exigencies of the situation. The application of such measures in part of the Republic's territory shall not entail any change in the powers of the organs of State authority and administration, the rights of public organizations or the rights and obligations of citizens in other localities or in the Republic as a whole.

These measures shall be compatible with the obligations arising out of international treaties in force for the Azerbaijani Republic in the field of human rights and also shall not entail any discrimination whatsoever against individuals or population groups on grounds of race, nationality, sex, language, religion, political opinions or social origin (art. 18).

The declaration of a state of emergency shall not entail any restriction whatsoever on the right to life or on the freedom of thought, conscience and religion, or any use of torture or cruel, inhuman or degrading treatment or punishment, as these rights and freedoms are understood in the International Covenant on Civil and Political Rights and in those laws of the Azerbaijani Republic which are not in conflict therewith. Similarly a criminal law which makes an act a punishable offence or increases a penalty shall not be applied retroactively (art. 19).

Justice in the territory where a state of emergency has been declared shall be administered only by the courts. The establishment of emergency courts of any kind is prohibited. Proceedings in all courts shall be conducted in accordance with the laws of the Azerbaijani Republic that were in force at the time of declaration of the state of emergency. The use of summary or emergency judicial procedure of any kind or in any form is prohibited (art. 26).

Death sentences imposed for offences committed during a state of emergency shall not be carried out at any time during the state of emergency or within 30 days after it is lifted (art. 28).

The National Assembly in the Azerbaijani Republic shall, throughout the period of the state of emergency, supervise compliance with this Act and carry out inspections of the territories concerned (art. 29).

21. In accordance with the international legal obligations arising for the Azerbaijani Republic out of the International Covenant on Civil and Political Rights, if a state of emergency is declared, the President of the Azerbaijani Republic or the National Assembly of Azerbaijan must within three days take steps to inform the Secretary-General of the United Nations of any restrictions on citizens' rights and freedoms derogating from obligations under the International Covenant, the extent of such derogations and the reasons for the decision.

22. Since the time of ratification of the Covenant, the Azerbaijani Republic, being subjected to aggression by the Republic of Armenia, has declared a state of emergency in some parts of the country situated on the frontier with Armenia or in the immediate vicinity of the main sites of extensive military operations in and around the Nagorny Karabakh region of the Azerbaijani Republic, and on each occasion has informed the Secretary-General of the United Nations accordingly.

23. In view of the increasing scale of aggression by the Republic of Armenia and the occupation of a considerable part of Azerbaijan's territory, a state of emergency in Azerbaijan was declared by Presidential Decree of 2 April 1993 with effect from 3 April. This Decree was confirmed by the National Assembly and thereafter came into force. In accordance with article 4, paragraph 3,

of the Covenant and article 31 of the State of Emergency Act of the Azerbaijani Republic, the Secretary-General of the United Nations was informed of the restrictions on citizens' rights and freedoms derogating from obligations under the Covenant, the extent of such derogations and the reasons for the decision.

24. The state of emergency in the territory of Azerbaijan was lifted on 22 September 1993 by decree of the President of the Azerbaijani Republic on the basis of a decision taken by the National Assembly, and a special communication regarding this was made to the Secretary-General of the United Nations.

Article 5

25. The Constitution of the Azerbaijani Republic defines the range of human rights and freedoms and the scope for their realization. In Azerbaijan the rights recognized by the Covenant have been made constitutional principles which may not be violated by any law, treaty or decision.

26. National legislation must be consistent with the international obligations assumed by the Azerbaijani Republic, since treaties ratified by Azerbaijan take precedence over domestic law.

27. The Azerbaijani Republic unreservedly supports the provision in article 5, paragraph 2, that there shall be no restriction upon or derogation from the fundamental rights recognized in Azerbaijan pursuant to law, conventions, regulations or custom on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

28. With regard to the obligation on any State, group or person not to engage in any activity or perform any act aimed at the destruction of rights and freedoms recognized in the Covenant, it should be noted that the Constitution of Azerbaijan contains provisions to the effect that:

(1) Respect for the person and protection of the rights and freedoms of citizens shall be the duty of all State organs, public organizations and officials (art. 55);

(2) The exercise of rights and freedoms shall be inseparable from fulfilment by the citizen of his obligations (art. 57);

(3) A citizen of the Azerbaijani Republic shall be bound to respect the rights and legitimate interests of other persons (art. 63).

29. The Criminal Code prescribes punishment for acts infringing the rights and freedoms of other citizens: obstruction of the exercise of equal rights for women; breach of the inviolability of the home; violation of the secrecy of correspondence, telephone conversations and telegraphic communications; obstruction of the exercise of the right to vote; forgery of ballot papers; incorrect counting of votes or breach of the secrecy of the ballot; violation of labour legislation; violation of occupational health and safety regulations; violation of the labour rights of an expectant or nursing mother; persecution of citizens for criticism; violation of trade union rights; breach

of copyright or inventors' rights; obstruction of the performance of religious rites; attacks on the person or rights of citizens in the guise of performance of religious rites; exploitation of religious superstitions for mercenary purposes, etc.

30. The obligation to observe the rights of other citizens is prescribed in many other provisions of enactments in various fields of law, for example:

(a) The Political Parties Act of the Azerbaijani Republic dated 3 June 1992 prohibits the founding and activity of political parties having as their aim or modus operandi the overthrow or forcible change of the constitutional system or violation of the territorial integrity of the Azerbaijani Republic; propaganda for war, violence or cruelty; the fomenting of racial, national or religious discord, or the commission of other acts contrary to the constitutional system of the Azerbaijani Republic and incompatible with international legal obligations (art. 4);

(b) The Mass Information Media Act of the Azerbaijani Republic dated 21 July 1993 places journalists under a duty to respect the honour and dignity, rights and legitimate interests of citizens and organizations, and strictly to observe journalistic ethics in gathering and imparting news and other material (art. 36).

Article 6

31. The right to life, which forms the basis of the entire range of human rights, is the subject of article 52 of the Constitution. The protection of this right is guaranteed by article 55, part II, of the Constitution. Although the death penalty is the supreme penalty prescribed in article 22 of the Criminal Code of Azerbaijan, cases of its actual application are the exception. Under this article of the Criminal Code, application of the death penalty by shooting is permitted as an exceptional form of punishment, pending its complete abolition, for crimes against the State and for murder under aggravating circumstances, especially murder of children.

32. The question of amnesty is governed by article 104, paragraph 33, of the Constitution of Azerbaijan, which provides that the grant of amnesty to persons convicted by the courts of the Azerbaijani Republic shall be at the sole discretion of the National Assembly of the Azerbaijani Republic.

33. Article 121-4, paragraph 15, of the Constitution makes it a function of the President of the Azerbaijani Republic to pardon persons convicted by the courts of the Azerbaijani Republic.

34. On 15 July 1992 the National Assembly of the Azerbaijani Republic passed an Act concerning amnesty in connection with the seventy-fourth anniversary of the Azerbaijani Democratic Republic and decided to release the following convicted persons from punishment in the form of deprivation of liberty, irrespective of the term imposed, and from punishment not involving deprivation of liberty:

(a) Persons who participated in the defence of the Motherland;

(b) Residents of the regions of Azerbaijan in which hostilities are in progress;

(c) Women;

(d) Men over 60 years of age;

(e) Disabled persons in categories I and II;

(f) Minors;

(g) Men who have minor children as dependants (in their care);

(h) Persons awarded orders and medals of the former USSR.

35. On 29 July 1992 the National Assembly passed a Constitutional Act of the Azerbaijani Republic concerning the procedure of amnesty and pardon.

36. Under article 22 of the Criminal Code, sentence of death cannot be imposed on persons who were under 18 years of age at the time of commission of the offence or on women who were pregnant at the time of commission of the offence or before sentence was passed. The death penalty cannot be carried out on a woman who is pregnant at the time fixed for execution of the sentence.

The death penalty is carried out only on the basis of a final judgement rendered by a criminal court which is competent to examine acts classifiable as criminal offences. The judgements of the criminal court are subject to appeal.

37. The Azerbaijani Republic fully supports the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, and a decision on accession to the Convention will be made during the forthcoming meetings of the National Assembly of Azerbaijan. In this connection the Azerbaijani Republic also reaffirms its commitment to the provision in article 6, paragraph 3, of the Covenant to the effect that no article of the Covenant authorizes any State party to derogate in any way from the obligations spelt out in that Convention.

Article 7

38. Under the Constitution, citizens of the Azerbaijani Republic are guaranteed security of person (art. 52). Respect for the person and protection of the rights and freedoms of citizens are the duty of all State organs, public organizations and officials.

Citizens of the Azerbaijani Republic shall have the right to judicial protection against attacks on their honour and dignity, life and health, personal freedom and property (art. 55).

39. Legislative and other measures have been adopted and are in effect to put the above constitutional principles into practice. The Azerbaijani Republic is a Party to the Geneva Conventions of 1949, which contain special provisions

against torture and cruel treatment. In the next few days the National Assembly of Azerbaijan is expected to take a decision regarding accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination.

40. Article 441 of the Code of Criminal Procedure, entitled "Measures of punishment applicable to persons in detention", provides that measures of punishment applicable to persons in detention shall be consistent with the seriousness and nature of the offence. It is unlawful to employ measures aimed at inflicting physical suffering or degrading treatment on persons in detention.

41. The Criminal Code provides a penalty for acts of torture and other forms of violence and cruel treatment. The relevant articles of chapter III, entitled "Offences against the person", prescribe strict liability, up to and including the death penalty, for murder under aggravating circumstances (art. 94) (1) from mercenary motives; (2) from motives of hooliganism; (3) in connection with the victim's performance of official or public duties; (4) of two or more persons; (5) of a woman known by the guilty party to be pregnant; (6) committed with particular cruelty or in a manner endangering many lives; (7) committed with the aim of concealing another crime or facilitating its commission, or in conjunction with rape; (8) committed by an especially dangerous recidivist or by a person who has already committed murder with the exception of the murder by a mother of her new-born child (art. 96), murder committed in a state of strong mental agitation (art. 97) and homicide exceeding the limits of self-defence (art. 98).

Article 100 prescribes punishment for a term of up to seven years for inducing a person who is materially or otherwise dependent on the guilty party to commit or attempt to commit suicide by means of cruel or systematic degrading treatment of the victim. Such actions committed against a person who is not in any way dependent on the guilty party are punishable by deprivation of liberty for a term of not more than three years.

Article 102 provides that the intentional infliction of grave bodily injury, i.e. bodily injury endangering life or resulting in the loss or non-functioning of an organ, mental illness or any other impairment of health, involving persistent loss of at least one third of the capacity to work or resulting in the termination of a pregnancy or in permanent disfigurement of the face, shall be punishable by deprivation of liberty for a term of not less than three and not more than eight years. If the same acts resulted in the death of the victim or were committed in such a way as to torment or torture, they shall be punishable by deprivation of liberty for a term of not less than 5 and not more than 10 years.

Article 105 provides that the intentional infliction of less grave bodily injury not endangering life and not having any of the consequences specified in article 102 of the Code but resulting in protracted impairment of health or persistent loss of less than one third of the capacity to work shall be punishable by deprivation of liberty for a term of not more than two years or by corrective labour for the same term.

The intentional infliction of slight bodily injury, causing short-term impairment of health or persistent minor disability, shall be punishable by deprivation of liberty for a term of not more than one year or by corrective labour for the same term.

If the same actions do not have the consequences referred to in the first part of this article, they shall be punishable by deprivation of liberty for a term of not more than six months or by corrective labour for the same term (art. 106).

Deliberate battery or other acts of violence causing physical pain but not impairment of health shall, if measures of public pressure have already been applied for similar acts, be punishable by deprivation of liberty for a term of not more than six months or by corrective labour for a term of not more than one year. Systematic battery or other acts of torture shall be punishable by deprivation of liberty for a term of not more than five years (art. 108).

Severe penalties are prescribed by the Criminal Code for rape, including rape of a minor or an infant (art. 109); for compelling a woman to engage in sexual intercourse, or to satisfy sexual passion in some other way, committed by a person on whom the woman was materially, officially or otherwise dependent (art. 110); for compelling a woman to have an abortion (art. 116); for wrongful placement in a psychiatric hospital (art. 120 (2)); for wrongful deprivation of a person's liberty, inter alia in a manner that endangers the life or health of the victim or causes him physical suffering; and for hostage-taking (art. 120 (1)).

In addition the Criminal Code prescribes a penalty for attacks on a person's honour or dignity (defamation or insult, arts. 121-122); malicious refusal to pay alimony or child maintenance (art. 132); malicious refusal to provide assistance to parents (art. 124); abuse of custodial rights (art. 125); compelling a woman to enter into marriage or preventing her entry into marriage (art. 128); and abduction of a woman for the purpose of marriage (art. 129).

Article 8

42. Slavery, the slave trade, holding in servitude and forced or compulsory labour do not occur in Azerbaijani society. Furthermore there is labour legislation in force in Azerbaijan which conforms to international standards in this field and reflects the aim of social protection of the working people.

43. The Azerbaijani Republic fully supports the provisions of international legal instruments, in particular the Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. A decision is expected shortly from the National Assembly of the Azerbaijani Republic concerning Azerbaijan's accession to these Conventions.

44. A criminal penalty is prescribed for unlawful deprivation of a person's liberty, inter alia in a manner that endangers the life or health of the victim or causes him physical suffering (art. 120 of the Criminal Code).

45. In connection with the Azerbaijani Republic's joining the International Labour Organisation and the need to meet the requirements arising out of its Constitution, and in order to improve national legislation in the field of labour and social protection, the National Assembly of the Azerbaijani Republic decided on 3 July 1993 to extend to the territory of the Azerbaijani Republic the application of the Conventions of the International Labour Organisation previously adopted by the USSR. These include the Forced Labour Convention (No. 29); the Freedom of Association and Protection of the Right to Organise Convention (No. 87); the Equal Remuneration Convention (No. 100); the Discrimination (Employment and Occupation) Convention (No. 111), etc.

46. On the basis of the above decision, the National Assembly instructed the competent organizations to coordinate work on bringing the national legislation into conformity with the international instruments and to deal with all practical matters arising out of the implementation of the Conventions.

47. The Criminal Code prescribes a penalty in the form of deprivation of liberty for a term of not more than one year or corrective labour for the same term for unlawful dismissal of a worker for personal motives, non-execution of a court decision concerning reinstatement in employment, or any other substantial breach of the labour legislation committed by an official of the State or of a public enterprise, institution or organization (art. 136).

Article 9

48. As already mentioned above, the Constitution of the Azerbaijani Republic guarantees security of person to citizens of Azerbaijan. No one may be placed under arrest save by decision of the court or with the sanction of the procurator (art. 52).

49. These constitutional provisions are applied through the Code of Criminal Procedure, article 11 of which, entitled "Security of person", supplements the above-mentioned provision with the stipulation that the procurator shall immediately release any person who has been wrongfully deprived of his liberty or kept in detention beyond the term prescribed by the law or by the sentence of a court. Offenders are liable to prosecution, inter alia in cases where the offences are committed by persons in the performance of their official duties. Article 174 of the Criminal Code makes it an offence for persons conducting an inquiry, an investigator or a procurator to prosecute, for mercenary or personal motives, a person who is known to be innocent. Article 175 prescribes a penalty for the delivery by judges, for mercenary or other personal motives, of a sentence, ruling, finding or decision which is known to be unjust, and article 176 for detention or arrest which is known to be wrongful.

50. Article 89 of the Code of Criminal Procedure provides that detention as a restraining measure shall be permitted only by decision of the court or with

the sanction of the procurator and only in cases of offences for which the law prescribes a penalty of deprivation of liberty for a term of more than one year.

The decision or ruling imposing detention shall state the specific facts which served as the grounds for applying the restraining measure in question.

In deciding whether to sanction an arrest, the procurator is bound to make himself thoroughly familiar with all materials containing grounds for detention. He shall personally question the suspect or accused where necessary, and a minor suspect or minor accused in all cases (art. 89).

The organ of inquiry may, before bringing charges, detain a person suspected of having committed an offence punishable by deprivation of liberty only where one of the following grounds exists:

(1) The person in question is caught in or immediately after the commission of the offence;

(2) Eyewitnesses, including the victim, directly indicate the person in question as having committed the offence;

(3) Evident traces of the offence are found on the suspect, on his clothing, in his presence or in his dwelling.

Where there are other data that give grounds for suspecting a person of having committed the offence, he may be detained only if he has attempted to escape, or if he has no fixed abode, or if the identity of the suspect has not been established (art. 119).

The organ of inquiry shall be bound to give the procurator notice in writing within 24 hours of every case in which a person suspected of having committed an offence is detained.

Within 48 hours after receiving notice of a detention, the procurator shall be bound either to sanction the detention or to release the detainee (art. 122).

51. Any person who is arrested shall be informed upon arrest of the grounds for his arrest and promptly informed of any charge brought against him.

52. Article 121 of the Code of Criminal Procedure provides that the organ of inquiry shall be bound to draw up a record of every case in which a person suspected of having committed an offence is detained, indicating the grounds and reasons, the day, hour, year and month, the place of detention, the detainee's explanations and the time of compiling the record. The record of detention shall be signed by the compiler and the detainee.

Article 123 provides that the questioning of a suspect shall be carried out promptly, and in any event not later than six hours after the time of detention.

Before a suspect is questioned, his rights shall be explained to him, namely that under article 124 a suspect has the right to appeal against the acts of the person conducting the inquiry, the investigator or the procurator, to give explanations and to make petitions.

He shall be informed of the offence of which he is suspected and a note thereof shall be made in the record of his interrogation, which shall be signed by the suspect and the person conducting the inquiry (art. 123).

If there is sufficient evidence to afford grounds for a charge of commission of an offence, the investigator shall render a decision on stated grounds to prosecute the person in question as the accused (art. 150).

Article 151 provides that the decision to prosecute a person as the accused shall state:

(1) The surname, given name and patronymic of the person prosecuted as the accused;

(2) The offence of which the person concerned is accused, with an indication of the time, place and other circumstances of commission of the offence;

(3) The article or articles of the criminal law prescribing liability for the offence in question.

The charge shall be filed not later than 48 hours after the time of the decision to prosecute the person concerned as the accused.

After the identity of the accused has been attested, the investigator shall communicate to him the decision to prosecute him as the accused, and shall explain the essentials of the charge brought.

The performance of these acts shall be attested by the signature of the accused on the decision to prosecute him as the accused, and by the signature of the investigator, together with an indication of the date of bringing the charge (art. 155).

After the charge has been brought and the accused has been questioned, the investigator shall be bound to settle the question of selecting a measure to secure the appearance of the accused (a restraining measure).

The investigator shall draw up a decision concerning the selection of a restraining measure, which shall indicate in particular the article of the criminal law specifying the offence in question, the type of restraining measure selected and the grounds for its selection.

The investigator shall immediately communicate the decision concerning the selection of a restraining measure to the accused, against signature (art. 165).

53. As already mentioned above, article 122 of the Code of Criminal Procedure places the organ of inquiry under a duty to give the procurator notice in writing within 24 hours of every case in which a person suspected of having committed an offence is detained.

Within 48 hours after receiving notice of a detention, the procurator shall be bound either to sanction the detention or to release the detainee.

The questioning of a suspect shall be carried out promptly, and in any event not later than six hours after the time of detention.

Before a suspect is questioned, his rights shall be explained to him. He shall be informed of the offence of which he is suspected and a note thereof shall be made in the record of his interrogation. He may be questioned concerning the facts of the offence and concerning facts the determination of which is necessary to the case.

During questioning a record is drawn up in which the suspect's statements are noted. The record shall be signed by the suspect and by the person conducting the inquiry (art. 123).

The investigator shall be bound to question the accused immediately after he has been charged. If the questioning could not be carried out immediately, a record shall be drawn up stating the reasons for this.

Save in exceptional cases, the questioning of the accused shall be carried out in the daytime (art. 157).

Article 10

54. Under the legislation of the Azerbaijani Republic, all persons deprived of their liberty have the right to be treated with humanity and with respect for the inherent dignity of the human person.

55. Under article 435 of the Code of Criminal Procedure, persons in detention have the right to a daily walk of one hour's duration; to receive a parcel or package weighing not more than 5 kilograms once a month; to receive remittances of money; to buy food and articles of prime necessity using chits; to wear their own clothing and footwear; to have in their possession documents and notes relating to a criminal case; to avail themselves of table games and books from the library at their place of pre-trial detention, and to address complaints and statements to State organs, public organizations and officials in accordance with the procedure laid down by the Code of Criminal Procedure.

Women in detention may keep children up to two years of age with them.

The duration of the daily walk is set at up to two hours for pregnant women, for women accompanied by children, and for minors (art. 435).

Persons in detention shall be provided with the requisite accommodation and amenities in accordance with the health and hygiene regulations.

Persons in detention shall be provided free of charge, in accordance with established standards, with food, an individual sleeping berth, bedding and other equipment and amenities. Where necessary they shall be issued with standard-pattern clothing and footwear.

Medical care, curative and preventive treatment and epidemic control measures in places of pre-trial detention shall be organized and conducted in accordance with the public health legislation (art. 437).

Meetings with relatives or other persons may be granted to persons in detention by the administration of the place of pre-trial detention only with the permission of the person or organ conducting the case. The duration of the meeting is set at one to two hours, not more than once a month as a rule.

Persons in detention shall have the right to meet with their defence counsel in private without any restrictions as to the number or duration of the meetings (art. 438).

Persons in detention may correspond with relatives and other citizens and lodge complaints or statements, which shall be inspected by the administration of the place of pre-trial detention.

Complaints, statements and letters addressed to the procurator shall not be subject to inspection and shall be dispatched within 24 hours after being handed in (art. 439).

The administration of the place of pre-trial detention may apply the following incentives to persons in detention whose conduct is exemplary: an expression of thanks; remission of a previously imposed penalty; or extension of the walking period (art. 440).

Persons in detention shall be held in common cells. In exceptional instances, on the basis of a decision on stated grounds taken by the person or organ conducting the case or by the head of the place of pre-trial detention and sanctioned by the procurator, they may be held in solitary confinement cells.

Persons in detention shall be assigned to cells in accordance with the following isolation requirements:

men: separately from women;

minors: separately from adults. In exceptional cases, with the sanction of the procurator, adults may be held in cells accommodating minors;

persons who have previously served a sentence in places of deprivation of liberty: separately from persons who have not been held in places of deprivation of liberty;

persons charged with or suspected of grave crimes: separately from other detainees;

persons charged with or suspected of especially dangerous crimes against the State: as a rule, separately from other detainees;

especially dangerous recidivists: separately from other detainees;

convicted persons: separately from other detainees, and in accordance with the type of corrective labour colony regime stipulated in the sentence of the court;

foreign citizens and stateless persons: as a rule, separately from other detainees.

Persons sentenced to death shall be held in isolation from all other detainees.

Persons suspected or charged in the same case shall be held separately where the person or organ conducting the case issues instructions to that effect (art. 434).

56. The Criminal Code provides that deprivation of liberty shall be imposed for a term of not less than 3 months and not more than 10 years; but for especially grave crimes which result in especially grave consequences, and for especially dangerous recidivists, for a term of not more than 15 years.

In sentencing a person who was under 18 years of age when the offence was committed, the term of deprivation of liberty may not exceed 10 years.

A judicial sentence to deprivation of liberty shall be served in corrective labour colonies or settlements in the case of persons who have committed an offence by negligence, in colonies on general, strengthened, strict and special regimes, or in prison, and also in educational labour colonies on general and strengthened regimes.

Service of sentence in corrective labour colonies shall be imposed on men as follows:

those sentenced for the first time to deprivation of liberty for a term of not more than five years for offences committed by negligence: in colonies or settlements for persons who have committed offences by negligence;

those sentenced for the first time to deprivation of liberty for premeditated offences which are not grave, or sentenced for the first time to deprivation of liberty for a term of not more than three years for grave crimes, and also those sentenced for the first time to deprivation of liberty for a term of more than five years for offences committed by negligence: in colonies on a general regime;

those sentenced for the first time to deprivation of liberty for a term of more than three years for grave crimes: in colonies on a strengthened regime;

those sentenced for especially dangerous crimes against the State, or persons who have previously served a sentence to deprivation of liberty: in colonies on a strict regime;

those adjudged to be especially dangerous recidivists: in colonies on a special regime.

Service of sentence in corrective labour colonies shall be imposed on women sentenced to deprivation of liberty as follows:

those adjudged to be especially dangerous recidivists, and also those convicted of especially dangerous crimes against the State: in colonies on a strict regime;

those sentenced for the first time to a term of not more than five years for offences committed by negligence: in colonies or settlements for persons who have committed offences by negligence;

other women sentenced to deprivation of liberty: in colonies on a general regime.

Service of sentence in educational labour colonies shall be imposed on:

male minors sentenced for the first time to deprivation of liberty for offences which are not grave, or sentenced for the first time to deprivation of liberty for a term of not more than three years for grave crimes, and also female minors: in colonies on a general regime;

male minors who have previously served a sentence to deprivation of liberty, and also those sentenced to deprivation of liberty for a term of more than three years for grave crimes: in colonies on a strengthened regime.

Depending on the nature and degree of the danger to society presented by the offence committed, the personality of the guilty person and other circumstances of the case, the court [may], with an indication of the grounds, [impose] service of [a sentence to] deprivation of liberty on persons sentenced for the first time to deprivation of liberty for a term of not more than 10 years for an offence committed by negligence: in colonies or settlements for persons who have committed offences by negligence; on convicted persons who are not adjudged to be especially dangerous recidivists: in corrective labour colonies of any type other than colonies on a special regime; and on convicted male minors: in educational labour colonies on a general regime instead of colonies on a strengthened regime.

Deprivation of liberty in the form of imprisonment for the entire term of the sentence or part thereof may be imposed on:

especially dangerous recidivists;

persons who have committed especially dangerous crimes against the State since reaching 18 years of age;

persons who, since reaching 18 years of age, have committed other grave crimes specified in the criminal legislation and who have been sentenced therefor to deprivation of liberty for a term of more than five years (art. 23).

57. Article 18 of the Corrective Labour Code of the Azerbaijani Republic provides for separate custody of convicted persons in corrective labour institutions. The article specifies that men shall be held separately from women and minors from adults in corrective labour institutions.

Men sentenced for the first time to deprivation of liberty shall be held separately from those who have previously served a sentence of deprivation of liberty and those sentenced for the first time for offences which are not grave shall be held separately from those sentenced for the first time for grave offences; women and minors sentenced to deprivation of liberty shall be held separately.

The following shall be held in isolation from other convicted persons, and also separately:

persons convicted of especially dangerous crimes against the State;

especially dangerous recidivists; convicted persons for whom the death penalty has been commuted by way of a pardon or an amnesty to deprivation of liberty.

Convicted foreign citizens and stateless persons shall as a rule be held separately from convicted citizens of the Azerbaijani Republic.

The following shall be held in the various colonies or settlements:

convicted persons who are sent in accordance with a judicial sentence to colonies or settlements for persons who have committed offences by negligence;

convicted persons who are sent in accordance with a judicial sentence to colonies or settlements for persons who have committed premeditated offences;

convicted persons transferred to colonies or settlements for persons who have firmly taken the path of reform (art. 18).

58. Article 1 of the Corrective Labour Code defines the purposes of corrective labour legislation, namely to provide for the execution of a criminal penalty in such a way that it not only constitutes punishment for the offence committed but also corrects and re-educates the convicted persons in the spirit of an honest attitude to work, exact compliance with the laws and respect for the rules of the community, prevents the commission of further offences and also facilitates the eradication of crime.

It is not the purpose of the execution of a penalty to cause physical suffering or to degrade a human being.

Article 11

59. No legislative provision in Azerbaijan provides for imprisonment merely on the ground of a person's inability to fulfil a contractual obligation, provided that the non-fulfilment is not deliberate and is not aimed at perpetrating fraud or forgery which might constitute an offence punishable under the Criminal Code.

Specifically, article 147 prescribes a criminal penalty for swindling i.e. taking possession of the personal property of citizens or acquiring a right to property through breach of trust or fraud, while article 148 prescribes a criminal penalty for the misappropriation or embezzlement of personal property which has been entrusted for a specific purpose.

60. Criminal liability is prescribed for giving short measure, giving short weight, overcharging, exceeding official retail prices and also the prices and scales of charges for household and municipal services to the population or other fraud on purchasers and customers in shops and other commercial enterprises or in enterprises engaged in public catering or household or municipal services (art. 154).

61. Matters relating to contractual obligations are governed by the Civil Code of Azerbaijan.

Article 149 provides that, by virtue of an obligation, one person (the debtor) shall be bound to perform for the benefit of another person (the creditor) some defined action, such as: transferring property, doing work, paying money, etc., or to refrain from some defined action, and that the creditor shall have the right to require the debtor to perform his duty.

Obligations must be fulfilled properly and within the time fixed in accordance with the stipulations of the law, planning document or contract or, in the absence of such stipulations, in accordance with the requirements usually put forward (art. 160).

Fulfilment of an obligation may be secured according to the law or the contract by means of a penalty (fine), a lien or a guaranty. In addition, obligations between citizens or with their participation may be secured by means of a deposit (art. 178).

In the event of non-fulfilment, or improper fulfilment of an obligation by the debtor, he shall be bound to compensate the creditor for the losses thereby caused (art. 202).

A person who has failed to fulfil an obligation or who has fulfilled it improperly shall be materially liable only where he is at fault by (design or negligence).

If the non-fulfilment or improper fulfilment of an obligation was due to the fault of both parties, then the court, arbitrator or arbitral tribunal shall reduce the extent of the debtor's liability accordingly. The extent of liability shall also be reduced if the creditor by design or negligence

contributes to increasing the losses caused by non-performance or improper performance of the contract, or has failed to take steps to decrease them (art. 209).

Article 12

62. Under the Act of the former USSR concerning the procedure for departure from the USSR (read "Azerbaijani Republic") and entry into the USSR (read "Azerbaijani Republic") by citizens of the USSR (read "Azerbaijani Republic"), dated 10 May 1991, every citizen of the Azerbaijani Republic has the right to leave Azerbaijan and to enter Azerbaijan. This Act guarantees citizens of the Azerbaijani Republic the right to leave Azerbaijan and to enter Azerbaijan.

Citizens of the Azerbaijani Republic shall exercise their right to leave Azerbaijan and to enter Azerbaijan using passports for foreign travel issued by the State authorities for that purpose.

No citizen of the Azerbaijani Republic may be arbitrarily deprived of the right to enter Azerbaijan (art. 1).

Applications by citizens for the issue of passports for foreign travel for the purpose of a temporary stay abroad shall be examined within a time-limit of one month; if the journey is connected with urgent medical treatment for the departing traveller or the serious illness or death of a relative living abroad, the application shall be examined within three working days.

Applications for the issue of passports for foreign travel for the purpose of leaving Azerbaijan to take up permanent residence abroad shall be examined within a time-limit of three months (art. 6).

A citizen of the Azerbaijani Republic may be temporarily refused the issue of a passport for foreign travel for the purpose of leaving Azerbaijan in the following circumstances:

(1) If he possesses information constituting a State secret;

(2) If a criminal prosecution has been instituted against him: until the proceedings have been completed;

(3) If he has been convicted of an offence: until the penalty has been served or remitted;

(4) If he evades the fulfilment of obligations laid on him by the court: until the obligations have been fulfilled;

(5) If he has knowingly communicated false information about himself;

(6) If he is registered at the call-up centre and is due to be called up for a term of active military service: until he has performed his term of active military service or has been exempted from it in accordance with the law;

(7) If a civil suit has been brought against him in court: until the proceedings have been completed;

(8) If, by the sentence of a court, he is adjudged to be an especially dangerous recidivist or is under administrative surveillance by the militia: until the conviction is quashed (expunged) or the surveillance ceases (art. 7).

In the event that an emergency arises in a particular country, the Cabinet of Ministers may impose restrictions on temporary departure to that country by reason of the impossibility of ensuring the safety of Azerbaijani citizens. Decisions on the imposition and removal of such restrictions shall be made public (art. 9).

Article 13

63. In Azerbaijan this matter is governed by the Act of the former USSR concerning the legal situation of foreign citizens in the USSR (read "Azerbaijani Republic") dated 24 June 1981.

64. Under the provisions of this Act, foreign citizens in the Azerbaijani Republic enjoy the same rights and freedoms and bear the same obligations as citizens of Azerbaijan save as otherwise provided in the Constitution, this Act or other legislative instruments.

Foreign citizens in Azerbaijan shall be equal before the law irrespective of their origin, social and property status, racial and national extraction, sex, education, language, attitude to religion, type and nature of occupation or other circumstances (art. 3).

A foreign citizen may be expelled from the Azerbaijani Republic:

(1) If his acts conflict with the interests of ensuring State security or the protection of public order;

(2) If the expulsion is necessary to protect the health and morals and to defend the rights and legitimate interests of citizens of the Azerbaijani Republic;

(3) If he has committed a gross violation of the legislation concerning the legal situation of foreign citizens in the Azerbaijani Republic.

The decision concerning expulsion shall be taken by the competent organs (art. 31).

Foreign citizens in Azerbaijan shall have the right to appeal to the court and other State organs for the protection of their rights (art. 21), including the right to submit to the judicial and other State organs the arguments against their expulsion and to have their case reviewed by the competent authority.

In the courts, foreign citizens shall enjoy procedural rights on an equal footing with citizens of the Azerbaijani Republic (art. 21).

Article 14

65. Under article 168 of the Constitution, justice in the Azerbaijani Republic is administered on the principle of the equality of citizens before the law and the courts, and article 169 provides that proceedings in all courts shall be public. Hearings in camera are allowed only in the cases specified by law and subject to compliance with all procedural rules.

66. Article 7 of the Act concerning the organization of the judicial system of the Azerbaijani Republic establishes the right of citizens of the Azerbaijani Republic, citizens of foreign States and stateless persons to the protection of the courts against the wrongful act of organs of State administration and of officials, and against any attacks on their honour, dignity, life and health, personal freedom and property, or other rights and freedoms provided for by the Constitution of the Azerbaijani Republic and the laws adopted pursuant thereto.

67. The principle of public court hearings is reflected in article 17 of the Code of Criminal Procedure, which provides that cases shall be heard in public in all courts, except cases where this is contrary to the interests of protecting State secrets.

Furthermore judicial proceedings in camera are allowed on the basis of a court ruling on stated grounds in cases of offences committed by persons under 16 years of age, in cases of sex offences and in other cases for the purpose of preventing the disclosure of information about intimate aspects of the lives of parties involved in the case, and also in cases where this is necessary in the interests of ensuring the safety of the victim, a witness, other parties involved in the case, family members or close relatives.

The judgements of the courts in all cases shall be announced publicly (art. 17).

68. No one may be found guilty of a crime or subjected to a criminal penalty save by the sentence of a court and in accordance with the law (art. 172 of the Constitution). This constitutional principle is reflected in article 3 of the Criminal Code and article 12 of the Code of Criminal Procedure.

69. Judicial proceedings in the Azerbaijani Republic are conducted in the Azerbaijani language or in the language of the majority of the population of the locality concerned. Parties involved in a case who do not know the language in which the court proceedings are conducted are guaranteed the right to familiarize themselves fully with the materials of the case, to participate in the judicial proceedings through an interpreter, and to address the court in their mother tongue (art. 171 of the Constitution).

70. This provision is also reflected in article 12 of the Judicial Proceedings Act and article 16 of the Code of Criminal Procedure, both of which provide that investigative and judicial documents shall be served on the accused in translation in his mother tongue or in another language that he knows.

71. Article 59 of the Code of Criminal Procedure requires the participation of defence counsel during an inquiry or preliminary investigation or in judicial proceedings in the cases of persons who do not know the language in which the court proceedings are conducted.

A defendant who does not know the language in which the proceedings are conducted shall be served with documents in translation in his mother tongue (art. 253).

72. When the preliminary investigation in a criminal case has been completed, the investigator shall be bound to produce to the accused for examination all the materials of the preliminary investigation in bound and numbered form. If film or sound recordings were used during the preliminary investigation, they shall be reproduced for the accused and his defence counsel.

The accused and his defence counsel may not be subjected to any restriction as regards the time required for them to familiarize themselves with all the materials of the case (art. 222).

Defence counsel shall have the right to explain to the accused the significance of evidence, to discuss with the accused the question of submitting petitions, and to submit petitions for investigations to be made, for evidence to be obtained and included in the case file, and concerning all other matters of significance to the case.

If several persons are charged in a case, the investigator shall be bound to produce to each of them all the materials of the preliminary investigation.

73. The hearing of a criminal case brought before a court shall begin not later than 15 days after the indictment of the accused (art. 256).

The judicial hearing of each case shall proceed without interruption except for designated periods of rest. The same judges shall not be permitted to try other cases before the hearing of a case already before the court has been completed (art. 258).

74. A suspect, an accused and a defendant have the right to defence.

The person conducting the inquiry, the investigator, the procurator and the court shall be bound to afford a suspect, an accused or a defendant the opportunity to defend himself by the statutory means and methods, and protection of his personal and property rights (art. 18).

75. Defence counsel shall be permitted to participate in the case from the time when a charge is brought or, if a person suspected of committing an offence is detained or a restraining measure is applied to him in the form of detention pending indictment, or if a decision is taken to apply such a restraining measure, not later than 24 hours after the time of detention. If the defence counsel chosen by the suspect or accused cannot be present within that time, the person conducting the inquiry, the investigator or the procurator may suggest to the suspect or accused that he should engage another defence counsel, or may provide him with defence counsel through the legal advice service.

Lawyers, trade union representatives and, in cases concerning members of other public organizations, representatives of those organizations shall be permitted to serve as defence counsel. The spouse, close relatives and legal representatives of the suspect, accused or defendant, and also other persons, may be permitted to serve as defence counsel by decision of the person conducting the inquiry, the investigator or the procurator, or by a ruling of the court (art. 57).

Defence counsel shall be engaged by the accused or suspect or his legal representatives, or by other persons at the request or with the consent of the accused or suspect.

At the request of the suspect or accused, defence counsel's participation in the case shall be ensured by the person conducting the inquiry, the investigator, the procurator or the court.

The head of the legal advice service or bar association shall be bound to appoint a lawyer to defend the suspect, an accused or a defendant.

No one person may serve as defence counsel for two or more accused persons, suspects or defendants if the defence interests of one of them conflicts with the defence interests of another.

Replacement of one defence counsel by another shall be permitted only upon the petition or with the consent of the accused, suspect or defendant.

In cases where participation of the defence counsel chosen by the accused is not possible for a long period, the person conducting the inquiry, the investigator, the procurator or the court may suggest to the accused that he should engage another defence counsel and, if he declines, may appoint a defence counsel for the accused through the legal advice service or bar association (art. 58).

76. The participation of defence counsel in the conduct of an inquiry or preliminary investigation or in court proceedings shall be mandatory in the cases of: minors, dumb, deaf or blind persons or other persons who owing to their physical or mental defects are unable to exercise for themselves their right to defence; persons accused of crimes punishable with death; persons who do not know the language in which the court proceedings are conducted, and also persons whose interests are in conflict, if at least one of them has a defence counsel; in cases in which a State or community prosecutor takes part; and in cases in which a lawyer takes part as the representative of the victim.

The person conducting the inquiry, the investigator, the procurator and the court may deem the participation of defence counsel necessary in other cases if they consider that the complexity of the case or other circumstances may make it difficult for the accused or suspect to exercise for himself his right to defence (art. 59).

77. The head of the legal advice service or bar association and also the organ of inquiry or preliminary investigation, the procurator or the court conducting the case may exempt the suspect, accused or defendant in whole or in part from payment for legal aid. Where such exception is granted by the

head of the legal advice service or bar association, the services of defence counsel shall be paid for out of the funds of the bar association, and in other cases at the expense of the State (art. 59-1).

78. In judicial proceedings the defendant shall have the right inter alia to petition the court to admit evidence provided by him, to summon witnesses, to appoint experts, to make evidence in the case public or to call for further evidence, and also the right to question witnesses, an expert, another defendant, the victim, a civil plaintiff and a civil respondent (art. 246 of the Code of Criminal Procedure).

79. Under article 305, which determines the procedure for questioning witnesses during a judicial investigation, after a witness has given evidence he may be questioned first by the presiding judge and people's assessors, then by the procurator, the public prosecutor, the victim, the civil plaintiff, the civil respondent, their representatives, defence counsel, the public defender and the defendant.

80. A suspect, an accused and a defendant shall be provided free of charge with the services of an interpreter if they do not understand the language used in court or do not speak that language.

The interpreter's attendance expenses shall be reimbursed and his fees paid out of the resources of the organs of inquiry and preliminary investigation and of the court (art. 101).

81. Article 19 places the court, the procurator, the prosecutor and the person conducting the inquiry under a duty to take all statutory measures for a comprehensive, complete and objective investigation of the facts of the case, and to reveal both facts tending to incriminate and facts tending to acquit the accused and also facts extenuating and aggravating his liability.

The court, the procurator, the investigator and the person conducting the inquiry may not shift the burden of proof on to the accused.

It shall be unlawful to solicit testimony from the accused or other participants in the case by violence, threats or other illegal measures (art. 19).

82. Any person conducting an inquiry or preliminary investigation who compels anyone to give testimony under questioning through the use of threats or other unlawful acts shall be liable to deprivation of liberty for a term of not more than three years.

The same acts accompanied by the use of violence or personal mockery against the person being questioned shall be punishable by deprivation of liberty for a term of not less than three and not more than eight years (art. 177 of the Criminal Code).

83. If the court finds that a person who, while under 18 years of age, committed an offence which does not present great social danger can be

corrected without applying a criminal penalty, it may apply to such a person the following enforcement measures of an educational nature which do not constitute a criminal penalty:

(1) The imposition of an obligation to apologize, publicly or in some other way determined by the court, to the victim;

(2) The issue of a reprimand or severe reprimand;

(3) Handing over under strict supervision to the parents or persons in loco parentis;

(4) Placement under the supervision of a social educator, the education authorities or teaching establishments;

(5) Placement under the observation of a public organization or work collective, subject to its consent;

(6) Placement of a minor in a special teaching and upbringing institution or medical and educational institution (arts. 10 and 56 of the Criminal Code).

84. The court, the procurator and, with the procurator's consent, the investigator may discontinue criminal proceedings against minors who have committed an act having the characteristics of an offence not presenting great social danger if they can be corrected without applying a criminal penalty, and may refer the cases discontinued to the Commission on Minors' Affairs unless the minor or his legal representative objects to that course (arts. 7; 216; 234; 245).

On a ruling by the court on stated grounds in cases concerning offences by persons under 18 years of age, the hearing shall be held in camera (art. 17).

In cases involving minors, compulsory participation by defence counsel shall be instituted during the inquiry and preliminary investigation or during the judicial proceedings (art. 59).

The legislation on criminal procedure, having regard to the age of minors and the desirability of re-educating them, prescribes in particular in articles 84 and 90, as one of the restraining measures, the placement of minors in appropriate children's institutions or placing them in the care of parents, guardians or curators.

85. By a decision of the National Assembly of the Azerbaijani Republic dated 28 July 1993, Azerbaijan acceded to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. By this decision, the Supreme Court and the Ministry of Justice of Azerbaijan were entrusted with the settlement of questions connected with accession to that instrument.

86. The sentences of all courts except those of the Supreme Court of the Azerbaijani Republic are subject to complaint and protest through appeal to a higher court.

The appeal court shall verify the legality and validity of the sentence (art. 343).

The defendant, his defence counsel and his legal representative may appeal under article 344 against the sentence of the court.

An appeal and a protest against a sentence may be made within seven days after the date of announcement of the sentence and by a convicted person in custody within the same period after the date on which a copy of the sentence is served on him (art. 345).

The appeal and protest shall be made to the appeal court through the court which delivered the sentence. Within 24 hours after the expiry of the time-limit for appeal or protest, the court of first instance shall transmit the appeal and protest with the criminal case to the appeal court, fix a time for the examination of the case in the higher court and notify the participants in the proceedings accordingly.

A notice of the time of examination of the case shall be posted in the appeal court not later than three days before the examination of the case.

If the convicted person is in custody, he shall be notified through the administration of his place of detention.

The submission of an appeal or protest shall halt the execution of the sentence (art. 348).

87. The right to appeal to the court against the acts of officials, State organs and public bodies is conferred on citizens by article 56 of the Constitution of Azerbaijan.

88. Article 21-1 of the Code of Criminal Procedure requires the organ of inquiry, the investigator, the procurator and the court to take measures to compensate for damage caused to a citizen by wrongful activities. The aforementioned article provides that if criminal proceedings are discontinued on the grounds of absence of a criminal act, absence from the act of a criminal element or lack of evidence of a citizen's participation in the commission of the offence, and also if an acquittal is pronounced, the organ of inquiry, the investigator, the procurator and the court shall be bound to explain to the citizen the procedure for restoring his violated rights and to take the statutory measures to compensate for the damage caused to the citizen by wrongful conviction, wrongful prosecution and wrongful application of detention as a restraining measure.

89. Compensation for the damage caused to a citizen by wrongful conviction, wrongful prosecution, wrongful application of detention as a restraining measure or wrongful imposition of an administrative penalty in the form of attachment or corrective labour shall be afforded by the State in full measure irrespective of any fault on the part of officials, organs of inquiry or preliminary investigation, the procurator's office or the court (art. 441-1 of the Civil Code).

90. Only a person who is guilty of committing a crime, i.e., who has by intent or negligence committed an act deemed by criminal law to be socially dangerous, shall be liable to prosecution and punishment.

No one may be found guilty of committing a crime and subjected to a criminal penalty save by the sentence of a court in accordance with the law (art. 3 of the Criminal Code and 12 of the Code of Criminal Procedure).

All persons who have committed crimes in the territory of the Azerbaijani Republic shall be liable to prosecution under the criminal legislation of Azerbaijan (art. 5).

Article 15

91. The criminality and punishability of an act shall be defined by the law in force at the time of commission of that act.

Any law which decriminalizes an act and renders it non-punishable, mitigates a penalty or otherwise alleviates the situation of a person who has committed an offence shall be retroactive.

Any law which establishes the criminality and punishability of an act, strengthens a penalty or otherwise aggravates the situation of a person who has committed an offence shall not be retroactive (art. 6 of the Criminal Code).

92. Any person who has committed an act having the characteristics of an offence may be released from prosecution if it is found that before the case was investigated or heard in court, as a result of a change in circumstances, the act committed by that person had ceased to be deemed socially dangerous or that person had ceased to be socially dangerous.

Any person who has committed an offence may be exempted from punishment by the sentence of the court if it is found that in virtue of his subsequent irreproachable conduct and honest attitude to work that person cannot, by the time the case is heard in court, be deemed socially dangerous (art. 46).

Article 16

93. Questions of the legal personality of citizens are dealt with in the Civil Code of the Azerbaijani Republic, article 9 of which provides that capacity to possess civil rights and obligations (civil legal capacity) shall be recognized in equal measure for all citizens of the Azerbaijani Republic.

A citizen's legal capacity shall arise at the time of his birth and shall be terminated by his death (art. 9).

A citizen's capacity to acquire civil rights and create civil obligations for himself by his own actions (civil capacity to act) shall arise in full on the attainment of majority, i.e. on the reaching 18 years of age (art. 11).

No one may be restricted in his legal capacity or capacity to act save in the cases and by the procedure prescribed by law. Transactions designed to restrict legal capacity and capacity to act shall be null and void (art. 12).

A citizen may be found incapable by the court in consequence of mental illness or feeble-mindedness as a result of which he is placed under guardianship (art. 15) and his capacity to act may be restricted by the court in consequence of abuse of spirituous liquors or narcotic substances if these acts place his family in a difficult material situation or deprive it of the means of subsistence and he is placed under curatorship (art. 16).

Foreign citizens and stateless persons shall enjoy legal capacity in the Azerbaijani Republic on an equal footing with citizens of Azerbaijan (arts. 567 and 568).

The civil capacity to act of a foreign citizen and of a stateless person shall be determined by the laws of the countries of which they are citizens [sic] (art. 568-1).

Article 17

94. Citizens of the Azerbaijani Republic are guaranteed inviolability of the dwelling. No one shall have the right, without a lawful reason, to enter a dwelling against the will of the persons living in it (art. 53 of the Constitution).

The personal lives of citizens and the secrecy of correspondence, telephone conversations and telegraphic communications shall be protected by law (art. 54).

Respect for the person and protection of the rights and freedoms of citizens shall be the duty of all State organs, public organizations and officials.

Citizens of the Azerbaijani Republic shall have the right to judicial protection against attacks on their honour and dignity, life and health, personal freedom and property (art. 55).

95. A breach of the inviolability of a citizen's dwelling, i.e. wrongful search or wrongful eviction, shall be punishable under the Criminal Code by deprivation of liberty for a term of not more than one year or corrective labour for the same term or by public reprimand (art. 132).

Violation of the secrecy of citizens' correspondence, telephone conversations and telegraphic communications shall be punishable by corrective labour for a term of not more than five months, a fine or a public reprimand (art. 133).

96. Article 121 of the Criminal Code prescribes liability for the intentional dissemination of false fabrications defamatory of another and article 122 liability for a deliberate affront to the honour and dignity of the person, expressed in an unseemly form.

97. Article 44 of the Mass Information Media Act of the Azerbaijani Republic dated 21 July 1993 provides that compensation for moral damage caused to a natural or legal person by the dissemination through a mass information medium of defamatory communications and materials inconsistent with reality and injurious to honour and dignity shall be afforded by means of a fine in accordance with the procedure established by civil legislation, directly by the mass information medium and also by any officials and citizens involved.

98. Article 7 of the Civil Code entitles a citizen to claim from the court the refutation of information derogatory to his honour and dignity if the person who has disseminated that information fails to prove that it corresponds to reality.

The protection of civil rights shall be afforded in accordance with the established procedure by the court, arbitrator or arbitral tribunal by means of: recognition of those rights; restoration of the situation which existed before the violation of a right, and suppression of the acts violating the right; an order for the performance of an obligation in kind; termination or modification of a legal relationship; and recovery, from the person who violated the right, of damages for the losses caused (art. 6).

Article 18

99. The Constitution of Azerbaijan guarantees to citizens of the Azerbaijani Republic freedom of conscience, i.e. the right to manifest any religion or none, to worship or to make atheistic propaganda. It shall be unlawful to arouse hostility and hatred in connection with religious beliefs (art. 50).

100. Prevention of the practice of religious rites shall be punishable by corrective labour for a term of not more than six months or a public reprimand (art. 142 of the Criminal Code).

101. The Freedom of Religion Act of the Azerbaijani Republic dated 20 August 1992 provides that everyone shall independently determine his own attitude to religion and shall have the right to manifest any religion individually or in common with others and to express and disseminate his own convictions in connection with his attitude to religion.

It is unlawful to obstruct in any way the determination by anyone of his own attitude to religion or to the manifestation of religion, participation in divine service, religious observance and practice or the study of religion.

The exercise of the freedom of religion may be restricted only on considerations of State security and public safety and in the event of need to protect rights and freedoms in accordance with the international obligations of the Azerbaijani Republic.

Parents or persons <u>in loco parentis</u> may by mutual agreement bring up their children in conformity with their own religious convictions and attitude to religion (art. 1).

Citizens of the Azerbaijani Republic shall be equal before the law in all aspects of political, economic, social and cultural life irrespective of their attitude to religion (art. 4).

In the Azerbaijani Republic, religion and religious formations are separate from the State.

The State does not entrust to religious formations the conduct of any affairs relating to itself and does not interfere in their activities.

All religions and religious formations are equal before the law. The conferment of advantages or imposition of restrictions on one religion and religious formation in relation to others is not permitted.

Religious formations shall have the right to participate in public life and also to make use of mass information media equally with public associations (art. 5).

Theology, religious epistemological and religious philosophical disciplines and familiarization with the elements of the sacred books may be included in the teaching curricula of State educational institutions.

Citizens may study divinity and receive religious instruction in any language individually or in common with others.

Religious formations may, in accordance with their statutes (regulations), establish educational institutions and groups for the religious instruction of children and adults, engage in teaching in other forms, and use for that purpose property belonging to them or placed at their disposal (art. 6).

Religious institutions and centres shall have the right to found, in accordance with their statutes (regulations), spiritual educational institutions for the training of priests and other ministers of religion (art. 10).

Religious formations having under their curatorship cloisters, fitting divine services and prayer meetings and also places of pilgrimage which are held sacred in one or other religion have the right to maintain them and make use of them.

Divine services and religious observances and practices are carried on in cathedrals, in territory belonging to them, in places of pilgrimage, at cemeteries, in the institutions of religious formations, and in citizens' apartments and houses.

The activity of priests is permitted in military units with the consent of the command.

Public prayer and religious rites shall be practised in hospitals, field hospitals, homes for the elderly and the disabled, hostels and places of pre-trial detention at the request of the inmates (art. 21).

Article 19

102. In Azerbaijan everyone has the right to hold opinions without interference.

103. The Constitution guarantees the right to enjoy the achievements of culture (art. 44), freedom of scientific, technological and artistic creation (art. 45) and participation in the conduct of State and public affairs and in the discussion and adoption of laws and decisions of State-wide and local significance (art. 46); to submit proposals to State organs and public organizations for improvements in their activity, and to criticize shortcomings in their work (art. 47). Citizens of the Azerbaijani Republic are guaranteed freedom of speech, of the press and of assemblies, meetings, street processions and demonstrations (art. 48) and the right of association in political parties, trade unions and other public associations.

104. The Mass Information Media Act of the Azerbaijani Republic dated 21 July 1992 provides that the freedom of speech and of the press guaranteed to citizens by the Constitution of the Azerbaijani Republic shall mean the right to express thoughts and convictions and to seek, receive, prepare and impart information in any form, including the mass information media.

In the Azerbaijani Republic:

seeking, receiving, selecting, producing and imparting mass information,

the founding of mass information media,

the possession, use and dissemination of information by the mass media,

the acquisition, manufacture, storage and use of technical devices and equipment and of raw and other materials necessary for the production and dissemination of information by the mass media

shall be subject to no restrictions except the rules laid down by this Act. Monopolization of mass information shall not be permitted (art. 1).

Under article 3 of the Act, censorship of mass information media is not permitted.

It is unlawful to use mass information media for the purpose of divulging a State secret or other secrets specially protected by law; violent overthrow or change of the existing constitutional system and the integrity of the State; propaganda for war, violence or cruelty; national, racial, class, social or religious exclusiveness, hostility or intolerance; the dissemination of pornography, or the commission of other criminal acts.

The use of the mass information media for the purpose of attacks on the personal life of citizens or on their honour and dignity is prohibited and subject by law to prosecution (art. 4).

Repeated violations of the requirements of article 4 of the Act by the founder and/or editorial staff (chief editor) in the course of a year, concerning which warnings have been issued in writing by the registration office, constitute grounds for judicial termination of the activity of mass information media.

In the event of termination of the activity of a mass information medium, the journalists' collective of its editorial staff or chief editor shall have a preferential right to found a mass information medium under the same name (art. 14).

Article 29 provides that citizens shall have the right to receive effectively, through a mass information medium, reliable information concerning the activity of State organs, public organizations and officials.

The mass information media may receive such information from State organizations, public associations and officials.

The representative of a mass information medium may appeal to a higher organ or official and then to the court against the refusal of State organs or officials to supply information requested.

Officials of State organs and public organizations may refuse to supply information only in the event that the information in question is not subject to publication on the basis of article 35 of the Act, which provides that the editorial staff of a mass information medium or a journalist:

(1) Shall not divulge in reports and materials for dissemination information supplied by a citizen on condition that it is kept secret;

(2) Shall not name a person who supplies information on condition that his name is not divulged, except in cases where this is required in connection with a case sub judice;

(3) Shall not disclose the content of the results of a preliminary investigation without permission in writing from the procurator, investigator or person conducting the inquiry;

(4) Shall not disseminate any information whatsoever which might identify a juvenile offender without his consent or that of his legal representative.

Article 20

105. Under article 29 of the Constitution, propaganda for war is prohibited in the Azerbaijani Republic.

106. In the Criminal Code, propaganda for war is examined in the section dealing with especially dangerous crimes against the State and, in whatever form it has been carried on, is punishable by deprivation of liberty for a term of not less than three and not more than eight years (art. 64).

107. Article 4 of the Mass Information Media Act makes it unlawful to use mass information media for the purpose of propaganda for war, violence or cruelty, national, racial, class, social or religious exclusiveness, hostility or intolerance.

108. Article 4 of the Political Parties Act of the Azerbaijani Republic dated 3 June 1992 prohibits the founding and activity of political parties having as their aim or modus operandi propaganda for war, violence or cruelty or the fomenting of racial, national or religious discord.

109. Violation of national and racial equality, as one of the principles laid down in the Constitution of the Azerbaijani Republic, is punishable under article 67 of the Criminal Code, in the section entitled "Other crimes against the State".

This article provides as follows:

"Deliberate acts aimed at affronting the national honour and dignity and likewise direct or indirect restriction of the rights of, or the establishment of direct or indirect advantages for, citizens according to their racial or national origin shall be punishable by deprivation of liberty for a term of not more than three years or by a fine.

"The same acts combined with violence, fraud or threats, inter alia when committed by an official, shall be punishable by deprivation of liberty for a term of not more than five years or by a fine.

"The acts specified in the first and second parts of this article, when committed by a group of persons or causing the death of persons or other grave consequences, shall be punishable by deprivation of liberty for a term of not more than 10 years."

Article 21

110. Article 48 of the Constitution of Azerbaijan guarantees to citizens of the Azerbaijani Republic freedom of assemblies, meetings, street processions and demonstrations, the holding of which is secured by making available to citizens and organizations public buildings, streets and squares, wide dissemination of information and the opportunity to use the press, television and radio.

111. Under article 12 of the Political Parties Act, parties have the right to hold meetings, demonstrations, assemblies and other mass events in accordance with the statutory procedure.

112. By way of example it will be appropriate to quote some extracts from Decision No. 13/589 of the Executive Committee of the Baku City Council of People's Deputies, dated 3 September 1991, concerning the procedure for the conduct of assemblies, meetings, street processions, demonstrations and other events in the streets, squares, parks and gardens of the city of Baku.

These regulations provide that an application for the holding of an assembly, meeting, street procession or demonstration shall be addressed to the head of the executive authority of the city of Baku.

Representatives of the work collectives of enterprises, institutions or organizations, organs of voluntary self-administration and individual groups of citizens who have reached the age of 18 years may submit an application.

An application for permission to hold an event shall be made in writing not later than 10 days before the intended date of the event.

The head of the executive authority of the city of Baku shall examine the application and communicate the decision taken to the representatives (organizers) not later than five days before the time at which the event described in the application is due to be held.

State and public organizations, officials and citizens shall have no right to obstruct assemblies, meetings, street processions or demonstrations held in accordance with the established procedure.

In holding assemblies, meetings, street processions and demonstrations, the representatives (organizers) and other participants shall be bound to uphold the applicable laws and the established order.

It shall be unlawful for participants to carry weapons or specially prepared or adapted articles which can be used against human life and health or to cause material damage to State or public organizations and to citizens.

The head of the executive authority of the city of Baku shall prohibit an assembly, a meeting, a street procession or a demonstration if the purpose of holding it conflicts with the Constitution of the Azerbaijani Republic or is a threat to public order or the safety of citizens.

Article 22

113. The right of citizens to associate in political parties, trade unions and other public associations is laid down in article 49 of the Constitution of Azerbaijan.

114. This principle confirms the rule laid down in the Covenant that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

115. In the Act of the former USSR concerning trade unions, their rights and guarantees of their activity, dated 10 December 1990, which is in force in the territory of Azerbaijan, article 2, entitled "The right to associate in trade unions", provides that citizens shall have the right to form trade unions on a voluntary basis at their own wish, without any restrictions whatsoever and without prior permission, and shall also have the right to join trade unions subject to acceptance of the provisions of their statutes.

Citizens have the right to form trade unions at their workplace in institutions, enterprises, associations, etc.

116. Under article 139 of the Criminal Code, a violation of trade union rights, i.e. prevention of the lawful activity of trade unions and their organs, is punishable by corrective labour for a term of not more than one year or by dismissal from employment or by a fine.

117. The principle of freedom of association is reflected in the Public Associations Act of the Azerbaijani Republic, dated 10 November 1992, article 1 of which provides that the expression "public association" shall mean a voluntary formation arising out of the free expression of the will of citizens associating on the basis of common interests.

In order to serve the purposes and perform the tasks specified in their statutes (regulations), programme documents and other texts, public associations shall:

freely disseminate information concerning their aims and activities;
associate in unions and federations on a voluntary basis;

present and defend the legitimate interests of their members (participants) in State organs and political and public organizations;

perform other functions provided for in this Act.

Public organizations shall have the right to approve mass information media and to hold meetings, demonstrations, assemblies and other mass events in accordance with the statutory procedure (art. 8).

The State guarantees respect for the rights and legitimate interests of public associations and conditions for the performance of their tasks in accordance with the Constitution and the laws (art. 9).

The founding and activity of public associations having as their purpose or modus operandi the overthrow of or violent change in the constitutional system or violation of the territorial integrity of the Azerbaijani Republic, propaganda for war, violence or cruelty, the fomenting of social, racial, national or religious hostility or the commission of other acts subject to a criminal penalty, and of secret public associations, are prohibited.

The founding of public militarized associations and armed formations not provided for in legislation is prohibited.

The founding and activity of public associations which attack the health and morals of the population and the rights and statutorily protected interests of citizens shall incur liability in accordance with the law (art. 4).

Registration of a public association by the organs of justice may be refused if the statute (regulations or other basic instrument) of that public association conflicts with the foregoing requirements.

An appeal against refusal to register a public association shall lie to the court within a time-limit of 10 days (art. 11).

118. Article 3 of the Political Parties Act provides that political parties shall be founded and shall function on the basis of the principles of freedom of association, free will, equal rights for their members, self-management, legality and openness.

The following may not be members of political parties at any time during their terms of office: the President of the Azerbaijani Republic, the presidents, vice-presidents and judges of all courts of the Azerbaijani Republic, military personnel, workers of the organs of the procuratorate, justice, the interior, national security, the frontier service, the customs, finance and fiscal authorities or State organs of the press, with the exception of auxiliary technical personnel and the management and creative staff of the State Television and Radio of the Azerbaijani Republic and religious workers (art. 8).

119. The comments on article 20 of the Covenant mention cases of restriction, under article 4 of the Political Parties Act, of the activity of political parties in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 23

120. The provisions of article 23 of the Covenant are fully reflected in the Constitution of Azerbaijan, article 51 of which reads as follows: "The family is under the protection of the State. Marriage is based on the voluntary consent of the woman and the man; the spouses are fully equal in rights in family matters. The State shows its concern for the family by founding and developing a broad network of children's institutions and organizations, improving household services and public catering, the payment of allowances at the birth of a child, the grant of allowances and privileges to large families, and other forms of allowances and family aid." These provisions of the Constitution are also reflected in articles 3, 4 and 5 of the Marriage and Family Code.

121. Compelling a woman to enter into marriage, or preventing a woman from entering into marriage of her own free will, combined with the use or threat of violence, shall be punishable by deprivation of liberty for a term of not more than two years or by corrective labour for a term of not more than one year (art. 128 of the Criminal Code).

The abduction of a woman for the purpose of entering into marriage with her is punishable by deprivation of liberty for a term of not more than three years.

The same act committed against a woman who has not reached marriageable age is punishable by deprivation of liberty for a term of not more than five years.

122. Article 1 of the Marriage and Family Code states the purposes of the Code:

> further to strengthen the family;
>
> to build family relationships on the voluntary matrimonial union of a woman and a man and on feelings, free from material calculations, of mutual love, friendship and respect for all members of the family;
>
> to protect the interests of the mother and children by every possible means and to ensure a happy childhood for every child;
>
> finally to eliminate harmful survivals and customs of the past from family relationships;
>
> to foster a sense of responsibility towards the family.

123. Article 13 of the Code provides for the contraction of marriage in the State offices for the registration of civil status documents.

Marriage shall be contracted on the expiry of a period of one month after the submission by the persons wishing to marry of an application to the State office for the registration of civil status documents (art. 14).

124. Marriageable age is fixed at 18 years for men and 17 years for women (art. 15).

125. The contraction of marriage shall be subject to the mutual consent of the persons entering into marriage and their attainment of marriageable age (art. 16).

126. The spouses shall enjoy equal rights in the family. Questions of the upbringing of children and other questions of family life shall be resolved by the spouses jointly (art. 21).

127. Each of the spouses shall be free in the choice of employment, occupation and place of residence (art. 22).

128. Property acquired by the spouses during the marriage shall be jointly owned by them. The spouses shall have equal rights to own, use and dispose of that property irrespective of whether it was acquired out of the earnings (income) of the husband or of the wife.

The spouses shall enjoy equal rights to property even in the event that one of them has been occupied in conducting the household economy or caring for the children or for other valid reasons has had no independent earnings.

The right to property acquired during the marriage shall be recognized as belonging to both spouses irrespective of whether or not the property is registered in the name of one of the spouses (art. 23).

In the conclusion of transactions by one spouse it shall be assumed that he is acting with the consent of the other spouse. However, for an alienation of property which is subject to mandatory notarial attestation, the consent of the other spouse shall be expressed in writing (art. 25).

Spouses may conclude all property transactions allowed by law. However, consent between them aimed at derogating from the property rights of one of them or of the children shall be null and void (art. 26).

129. In the event of the division of property which is jointly owned by the spouses, they shall be awarded equal shares. In individual cases, the court may depart from this rule having regard to the interests of minor children or interests of one of the spouses that deserve consideration. The share of one of the spouses may be increased if the other spouse declines to participate in socially useful work or has consumed the joint property to the detriment of the family's interests.

In the division of property which is jointly owned by the spouses, the court shall determine what articles shall be assigned to each of them. In cases where one of the spouses is assigned articles of a value exceeding the share due to him, the other spouse may be awarded appropriate monetary compensation (art. 28).

Property which belonged to the spouses before entry into marriage and property received by them as gifts during the marriage or by inheritance shall belong to each of them. Things of individual use (clothing, footwear, etc.), with the exception of valuables and other luxury articles, shall, even if acquired during the marriage out of the common resources of the spouses, be recognized as the personal property of the spouse who uses them (art. 29).

130. During the lifetime of the spouses, the marriage may be dissolved by divorce upon the application of one or both spouses.

Without the consent of his wife, a husband may not institute proceedings for the dissolution of marriage during his wife's pregnancy or within one year after the birth of a child (art. 38).

Marriage may be dissolved by the court or by the officer for the registration of civil status documents in the case of mutual consent of spouses who have no minor children; the same applies to marriage with missing persons, incapable persons or persons sentenced to deprivation of liberty for a term of not less than three years (arts. 39, 45 and 46).

A marriage shall be dissolved if the court finds that it has become impossible for the spouses to live together further and to preserve the family.

In adopting the decision to dissolve a marriage, the court shall where necessary take measures to protect the interests of minor children and of a disabled spouse (art. 41).

In taking the decision to dissolve a marriage, the court shall, in the event of a dispute between the spouses, determine with which of the divorcing

spouses each of the children shall remain, and also from which of the parents and to what extent means for the maintenance of the children shall be recovered (art. 43).

Article 24

131. Parents shall be bound to bring up their children, to take care of their physical development and instruction, to prepare them for socially useful work and to rear worthy members of society (art. 67 of the Marriage and Family Code).

Political rights may not be exercised in conflict with the interests of children (art. 68).

The protection of the rights and interests of minor children is incumbent on their parents. Parents are the lawful representatives of their minor children and shall act to defend their rights and interests in all institutions, including judicial institutions, without special authorization (art. 72).

Parents or one parent may be deprived of parental rights if it is established that they decline to perform their duties to bring up their children or misuse their parental rights, treat the children cruelly or exercise a harmful influence on the children by their own amoral or antisocial conduct, or if the parents are chronic alcoholics or drug addicts (art. 74).

Where both parents are deprived of parental rights, the child shall be assigned to the care of the guardianship and curatorship authorities (art. 77).

Guardianship and curatorship shall be instituted for the upbringing of minor children who, as a result of the death of their parents, the forfeiture of parental rights by their parents or the illness of their parents or for other reasons, have been left without parental care, and also to protect the personal and property rights and interests of such children (art. 138).

132. Every child must be registered immediately after birth and must have a name.

Birth shall be registered at the offices for the registration of civil status documents at the children's birthplace or at the place of residence of the parents or of one parent. A declaration of birth shall be made in writing or orally by the parents or one parent; in the event of sickness or death of the parents or if they are unable for other reasons to make a declaration, the declaration may be made by relatives, neighbours, the administration of the medical institution in which the mother is confined, or other persons (art. 184).

The declaration of birth shall be made not later than three months after the date of the child's birth or, in the event of stillbirth, not later than 72 hours from the time of delivery (art. 185).

133. The surname of a child shall be determined by the surname of its parents. Where a child's parents have different surnames, the mother's or father's surname shall be assigned by agreement between the parents or, in the absence of agreement, by order of the guardianship and curatorship authority (art. 63).

A child's given name shall be assigned by agreement between the parents; a patronymic shall be assigned according to the given name of the father (art. 65).

134. Article 11 of the Citizenship Act of the Azerbaijani Republic defines the grounds for acquisition of citizenship of the Azerbaijani Republic, one of which is the acquisition of citizenship by birth.

A child both of whose parents possessed the citizenship of the Azerbaijani Republic at the time of his birth shall be a citizen of the Azerbaijani Republic irrespective of whether he was born in or outside the territory of Azerbaijan (art. 12).

Where the parents are of different citizenship and one of them possessed the citizenship of the Azerbaijani Republic at the time of the child's birth, the child shall be a citizen of the Azerbaijani Republic:

(1) If he was born in the territory of the Azerbaijani Republic;

(2) If he was born outside the Azerbaijani Republic but his parents had their or one parent had his place of permanent residence in the territory of the Azerbaijani Republic at that time.

Where the parents are of different citizenship, one of them possessed the citizenship of the Azerbaijani Republic at the time of the child's birth, and both parents had their place of permanent residence outside the Azerbaijani Republic at that time, the citizenship of a child born outside the Azerbaijani Republic shall be determined by agreement between the parents expressed in writing.

A child one of whose parents possessed the citizenship of the Azerbaijani Republic at the time of the child's birth, while the other is a stateless person or was unknown, shall be a citizen of the Azerbaijani Republic irrespective of his birthplace.

In the event of determination of the paternity of a child whose mother is a stateless person and whose father is recognized as a citizen of the Azerbaijani Republic, a child under 14 years of age shall become a citizen of the Azerbaijani Republic irrespective of his birthplace (art. 13).

A child of stateless persons who have their place of permanent residence in the Azerbaijani Republic, who was born in the territory of the Azerbaijani Republic, shall be a citizen of the Azerbaijani Republic (art. 14).

Children who are in the territory of Azerbaijan and whose parents are unknown shall be citizens of the Azerbaijani Republic (art. 15).

135. On 21 July 1992, by decision of the National Assembly of the Azerbaijani Republic, Azerbaijan acceded to the United Nations Convention on the Rights of the Child of 5 May 1993 and to the World Declaration on the Survival, Protection and Development of Children. In these decisions, the Parliament of Azerbaijan instructed the Cabinet of Ministers to resolve all practical questions connected with the application in the Azerbaijani Republic of the decisions set forth in these international instruments.

Article 25

136. The Constitution of Azerbaijan confers on citizens of the Azerbaijani Republic, on the basis of equality, the right to participate in the management of State and public affairs and in the discussion and adoption of laws and decisions of State-wide and local significance. This right is secured by the opportunity to vote and to be elected to the Councils of People's Deputies (the organs of representative power) and other elective State organs, to take part in nation-wide discussions and votes, in popular control, in the work of State organs, public organizations and organs of voluntary self-administration, and in the assemblies of work collectives of the place of residence (art. 47).

The people's will shall be expressed within the framework of an elective parliament, the elections to which shall be conducted in electoral wards returning a single member on the basis of universal, equal and direct suffrage by secret ballot (art. 91).

The elections of people's deputies shall be universal: citizens of the Azerbaijani Republic who have reached 18 years of age shall have the right to vote.

A citizen of the Azerbaijani Republic who has reached 21 years of age may be elected a people's deputy of the Azerbaijani Republic.

A citizen of the Azerbaijani Republic who has reached 18 years of age may be elected a deputy to the local Councils of People's Deputies of the Azerbaijani Republic (art. 92).

Elections of people's deputies shall be equal: a voter in each electoral ward shall have one vote; voters shall participate in elections on an equal footing (art. 93).

Elections of people's deputies shall be direct: the people's deputies shall be elected directly by the citizens (art. 94).

The ballot in elections of people's deputies shall be secret: no supervision of the expression of the voters' will shall be permitted (art. 94).

The right to nominate candidates for election as people's deputies shall vest in work collectives, public organizations, assemblies of voters at the place of residence and military personnel in military units.

The number of candidates for election as people's deputies shall not be restricted. Every participant in a pre-electoral assembly may submit the candidature of any citizen of the Azerbaijani Republic, including his own, for discussion.

Any number of candidates may be included in the ballot papers. Candidates for election as people's deputies shall participate in the electoral commission on a footing of equality.

The expenses connected with the preparation and conduct of elections of people's deputies shall be paid by the competent electoral commission out of a single fund to be established for the account of the State, enterprises and public and other organizations for the purpose of ensuring equal conditions for every candidate for election as a deputy (art. 96).

The preparations for elections of people's deputies shall be carried on frankly and openly.

Citizens of the Azerbaijani Republic, work collectives, public organizations and the collectives of specialized secondary and higher educational establishments shall be guaranteed the opportunity for free and all-round discussion of the political, working and other qualities of candidates for election as people's deputies and also the right to campaign for or against a candidate for election in the press and on television and radio (art. 97).

The deputies shall be the plenipotentiary representatives of the people in the higher organs of legislative power.

In his activity a deputy shall be guided by the interests of the State as a whole, shall take into consideration requests for information from the population of the electoral ward and shall strive to give effect to the voters' mandate (art. 99).

A deputy shall be accountable for his work to the voters and also to such collectives and public organizations as nominated him for election as a deputy.

A deputy who has not justified the confidence of the voters may be recalled at any time by decision of a majority of the voters in accordance with the statutory procedure (art. 103).

137. The foregoing provisions of the Constitution are reflected in the Act of the Azerbaijani Republic concerning elections of people's deputies of the Azerbaijani Republic, dated 26 June 1990.

Article 2 of this Act prohibits any direct or indirect restriction of the electoral rights of citizens of the Azerbaijani Republic according to origin, social and property status, racial and national extraction, sex, education, language, attitude to religion, length of residence in a particular locality, or type and nature of occupation.

138. The Constitution of Azerbaijan provides that the Head of the Azerbaijani State shall be the President of the Azerbaijani Republic (art. 121-1), and that a citizen of the Azerbaijani Republic over 35 years of age may be elected President.

The President of the Azerbaijani Republic shall be elected by the citizens of Azerbaijan on the basis of universal, equal and direct suffrage by secret ballot for a term of five years. The number of candidates for the post of President of the Azerbaijani Republic shall not be restricted. Elections of the President of Azerbaijan shall be deemed valid if not less than 50 per cent of the voters took part in them. The candidate who received more than half the votes of the voters who took part in the ballot shall be deemed elected (art. 121-2).

139. The Act of the Azerbaijani Republic concerning elections of the President of the Azerbaijani Republic, dated 26 June 1991, provides that citizens of the Azerbaijani Republic who have reached 18 years of age shall have the right to participate in elections of the President of Azerbaijan.

It is unlawful to restrict the rights of citizens of Azerbaijan to participate in elections of the President of Azerbaijan according to origin, social and property status, racial and national extraction, sex, education, language, attitude to religion, political and other views, or type and nature of occupation (art. 2).

State organs, political parties, public formations and individual citizens participating in the preparations for and conduct of elections of the President of the Azerbaijani Republic shall carry on their activity frankly and openly.

The Azerbaijani Republic guarantees to political parties, trade unions, other public organizations and mass movements, work collectives and citizens of Azerbaijan the right to campaign for or against any candidate for election as President at assemblies, meetings and gatherings of citizens and in mass information media.

Campaigning on polling day is prohibited (art. 4). The initiative in nominating candidates for President of Azerbaijan may be taken by individual citizens of the Azerbaijani Republic having full capacity to act and wishing to nominate a citizen of the Azerbaijani Republic as their own candidate, by work collectives and also by political parties registered in accordance with the legislation of the Azerbaijani Republic (art. 7).

140. The most important laws and affairs of State of the Azerbaijani Republic are submitted to a nation-wide vote (referendum).

Questions connected with the conduct of a referendum are governed by the Act of the Azerbaijani Republic concerning the nation-wide vote (referendum) of the Azerbaijani Republic, dated 7 March 1991.

Under this Act, a referendum is conducted on the basis of the following principles:

- Participation in the referendum is free;
- The ballot is free and secret;
- The referendum is held on the basis of universal, equal and direct suffrage;
- Citizens of the Azerbaijani Republic participate in the ballot directly and personally at their place of residence;
- Every participant in the referendum has one vote.

In the conduct of a referendum, openness, inter alia in counting the votes, and community participation shall be ensured (art. 2).

The participants in a referendum are citizens of the Azerbaijani Republic who have reached 18 years of age and who have the vote.

Any direct or indirect restriction whatsoever of the rights of citizens of the Azerbaijani Republic to participate in a referendum is inadmissible and punishable by law (art. 3).

The State guarantees to citizens of Azerbaijan, political parties, mass movements, trade unions, other public associations, work collectives and the collectives of specialized secondary and higher educational establishments the right to campaign unimpeded for or against demands for the holding of a referendum and also for or against any draft law or other draft decision submitted to a referendum (art. 16).

The ballot in a referendum shall be conducted by districts. The districts shall be delimited by the procedure laid down for the delimitation of electoral wards in elections of people's deputies of Azerbaijan (art. 23).

A decision adopted by referendum shall be final, shall have binding force throughout the territory of the Azerbaijani Republic and may be set aside or amended only by referendum (art. 29).

141. The Criminal Code prescribes a penalty in the form of deprivation of liberty for a term of not more than two years or corrective labour for a term of not more than one year for preventing a citizen of the Azerbaijani Republic by violence, fraud, threats or bribery from exercising his right to vote (art. 134).

Any member of an electoral commission or other official who commits forgery of ballot papers or deliberately miscounts the votes or who violates the secrecy of the ballot shall be liable to deprivation of liberty for a term of not more than two years or to corrective labour for the same term (art. 135).

Article 26

142. The principle that citizens of the Azerbaijani Republic are equal before the law and are guaranteed the observance and unimpeded exercise of all the rights and freedoms provided for in international legal instruments, irrespective of sex, racial and national extraction, religion, social origin, political convictions and other circumstances, is laid down in article 19 of the Constitutional Act concerning the State independence of the Azerbaijani Republic.

143. The system of national legislation, of which the many international conventions recognized by the Azerbaijani Republic form part, is guided by the fundamental principle of non-discrimination. Furthermore all the laws provide for measures designed to apply that principle to practical affairs. The comments on previous articles of the Covenant convey a general picture of the national legislation in this field.

144. Confirming once more what has been said above, it is appropriate to add that the legislative instruments in force in Azerbaijan concerning education, language, political parties, public associations, public health, labour, youth policy and so forth support the realization of human rights without any discrimination whatsoever.

145. In addition the criminal legislation prescribes liability for any violation of national and racial equality (art. 67 of the Criminal Code) and for preventing the exercise of equal rights for women (art. 131).

146. Paragraph 14 of the Decree of the President of the Azerbaijani Republic concerning the protection of rights and freedoms and State support for the development of the language and culture of national minorities and of peoples and ethnic groups few in numbers living in the Azerbaijani Republic, dated 16 September 1992, contains instructions to the Procurator General of Azerbaijan, the Ministry of National Security, the Ministry of the Interior and the Ministry of Justice to suppress by the statutory procedure any act aimed at discrimination on grounds of national characteristics, assertion of national exclusiveness or national superiority, or fomenting of national hostility, and to prosecute the guilty parties.

Article 27

147. Having regard to the national minorities and the peoples and ethnic groups few in numbers living in the territory of the Azerbaijani Republic, and also the need to create favourable conditions for their free development; taking as his aim the further improvement of relations between nationalities in the Republic and the raising of their level to meet the requirements of the State based on law that is being built, on the basis of article 19 of the Constitutional Act concerning the State independence of the Azerbaijani Republic; and having in mind the need for the unswerving realization in our country of freedoms of the person and equal rights for all citizens irrespective of national or racial extraction or religious adherence, the President of Azerbaijan in his Decree, the full name of which was given in the

comments on article 26 of the Covenant, gave specific instructions to the Cabinet of Ministers, ministries and departments and the heads of local executive authorities:

With a view to protecting the political, economic, social and cultural rights and freedoms of the representatives of national minorities and of peoples and ethnic groups few in numbers living in the territory of the Azerbaijani Republic, as defined by the Constitution of the Azerbaijani Republic, and to granting priority assistance in the realization of those rights and freedoms, to examine comprehensively within the framework of the activity of the ministries and departments questions arising out of this Decree in connection with national relations and tasks;

In keeping with the vocational training of the representatives of national minorities and of peoples and ethnic groups few in numbers and considering that they have equal rights with all, without any discrimination whatsoever, to create all the conditions for the realization of those rights; to prevent any act or omission aimed at violating them, through the examination of petitions and complaints; and, when receiving citizens, to increase attention to the solution of these problems.

The Decree also contains instructions on the following matters:

preservation and development of the cultural, linguistic and religious distinctiveness of national minorities and of peoples and ethnic groups few in numbers;

free practice of national traditions and customs, religious rites and ceremonial and the preservation and use of holy places;

free development of national crafts, professional and amateur creation and popular trades;

protection of monuments of the history and culture of all nationalities;

protection and conservation of places of significance to the population, reserves, parks and other natural features;

the creation of conditions and the adoption of appropriate legal measures to guarantee the rights of all nationalities to organize their own cultural and religious societies and the activity thereof, and the grant of State support, including the provision of premises and material and financial resources, to such societies and associations;

the preparation and submission to the President of Azerbaijan of draft laws concerning the rights of national minorities and of peoples and ethnic groups few in numbers living in the Azerbaijani Republic and concerning rights to simplified crossing of the State frontiers of Azerbaijan;

the preparation of execution of measures to study the language and literature of peoples few in numbers as part of the curriculum of secondary schools in territory where their representatives live close together;

the preparation and submission of appropriate proposals concerning preferential admission to higher and specialized secondary educational establishments for the inhabitants of highland areas of the Republic, for young people belonging to peoples few in numbers and for fellow-countrymen living outside the Republic.

Specific instructions in this instrument relate to the opening, in the State Institute of Languages, of a department of philology of peoples few in numbers and the establishment of a corresponding chair, the issue of pedagogical, informative and artistic literature in the languages of peoples few in numbers, the organization of television programmes illustrating the life and work of peoples and ethnic groups few in numbers living in Azerbaijan, etc.